

WHY IT'S EASY TO STAY BULLISH ON DFS

The DFS Big Two's legal battle not only could send the wrong message to future regulators and slow positive legislation, their business practices have created a number of issues with the product and offer that need to be dealt with. However, **Joe Brennan** of FastFantasy disagrees that the current headwinds facing DFS in the US bode negatively for its long-term prospects.

In retrospect, maybe the saturation bombing of consumers with non-stop ads promising "Billions...Millions...Free Money" was not the best way for FanDuel and DraftKings to avoid the skeptical eye of certain state attorneys general, lawmakers, investigative media, and a wave of opportunistic class-action lawsuits. This new scrutiny likely won't be fatal - daily fantasy sports is here to stay, I have no doubt. But equally, I expect this upheaval has the potential to radically change the

Because, let's be clear: there is a distinction between the DFS industry as a whole, and then FanDuel and DraftKings.

That the Big Two have chosen to fight in court against law enforcement and regulators in states like NY and IL. Because of the high traffic volumes flowing from each state, they must feel that anything less than an all-out legal effort to stave off shutdown would represent an existential threat to their total business and, no less, investor value.

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trajectory of the industry, and separately, the early leaders in the market.

It's clear that the daily fantasy sports (DFS) industry has reached a crossroads in its very young life. On the one hand, the industry can try to fight to preserve the status quo - of nationwide unregulated, open markets - or on the other hand, it can prepare for, help shape and encourage regulation. Well, of course the choice is obvious, but is it really one that the current market leaders can be accepting of the potential results?

However, focusing on efforts to speed legislation that would expressly legalize and regulate the industry in all of those trouble-spot states would be more beneficial in the long run. Lawsuits could potentially slow positive legislation, and at a minimum, may send the wrong signal to future regulators.

All of this legal activity is unnecessarily confusing the issue at a time when legislatures seem keen to move on it, and diverting focus from the questions at the heart of the matter. The issue here is not

whether daily fantasy sport is "skill" or "chance" or "gambling". The only two issues that matter are, 1) will it be permitted by the state, and 2) who gets to operate?

The positives

But let's take a moment to talk about something positive. There are a lot of people that enjoy fantasy sports. Sure, the ad blitz to start the NFL season was a bit much, but it confirmed that fantasy sports are an accepted form of entertainment in the US, and the enthusiasm with which the leagues and the media companies have embraced the industry is a strong indicator that it will not see a wholesale dump-off similar to the post-UIGEA iGaming sector.

Fantasy sports are successful in the US because it is a way of combining two great public loves of the American people: sports, and strong opinions. The massive popularity of everything from sports talk radio call-in programmes to fan forums to Twitter confirm that the only thing that rivals our love of sports is our powerful need to tell you our certain opinion about sports. And fantasy sports is a near-perfect mixing of this. It combines knowledge of the game, determining the value of players, deciding who is best, and now, with DFS, putting your money where your mouth is.

Note that the millions of DFS players in the US have not evaporated in the face of this troubling patch for the Big Two companies. Any drop in participation can in part be attributed to the typical decline shown over the course of the American football season which has been observed for years, even in season-long and free-to-play variants. Despite all of the legal and

regulatory headwinds, millions of people still want to - and do - play fantasy sports.

But, let's be clear about what "fantasy sports" really are: they are "synthetic" or alternative scoring systems, based on sports analytics. Regardless of any of the other novel attachments that may be added to the games, they are intended to reward an understanding of the actual statistical measures of individual athletes' performances. It is a scoring system that is resistant to the kind of tampering on unlawful elements that would seek to engage in match-fixing, which is a major reason leagues like the NFL, NBA and MLB are accepting of it over traditional fixed-odds sports betting.

Sports analytics are, to say the least, huge in the US right now. Forget the professional teams with armies of statisticians doing deep analysis of prospects, looking to isolate the right blend of metrics to determine who will be the next Tom Brady or LeBron or Mike Trout. Now, every day fans talk more "Moneyball" on sports talk radio and in online forums than might be considered normal for a nation that educational experts want to convince us possesses declining math & science skills. For many fans, the data and the games are inseparable.

The challenges

Yet, despite all of the glitzy ads and brand association with leagues and networks, daily fantasy sports is still not a "big game", based on the revenue numbers. By comparison, traditional sports betting still dwarfs the young industry, despite betting being a mostly underground market in the US. That the DFS industry has not done a better job of

converting sports bettors to fantasy games is a huge missed opportunity. The question is, why is this so?

One argument would be that the industry is still relatively new, and that it will take time to make consumers aware of the games, though I doubt that "lack of awareness" is still a significant problem for DFS after the media blitz during the NFL season. Also, given the velocity with which consumers embrace new digital media and e-commerce

casual players has also been a challenge, which the Big Two have turned into a ridiculously expensive proposition. Research shows that existing DFS formats are practically unwinnable by large segments of players. Negative coverage about alleged "insider information" and the handful of DFS "pros" that dominate real-money contests have further hampered DFS' image and ability to attract and retain a broader base of players.

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in this age, and the relative ease with which one can establish an account with DFS operators, "newness" does not seem to be a significant hurdle.

Instead, it is likely that the bigger challenge would be the relative complexity of the games. Another would be the amount of time it takes to participate. Multiple surveys - from FSTA to Eilers Research - have shown that the Number One reason people either do not play or stop playing fantasy sports is the perception that they are overly-difficult and time-consuming for the average player. When compared to the relatively simple, binary choices in traditional sports betting, it's hard to argue that daily fantasy sports couldn't use a bit of fine tuning and innovation to create games that reduce such perceived barriers to entry for consumers.

Retention and further expansion of more

But again, while there are clearly issues that must be dealt with, they are largely tied to the Big Two's business practices, not to government's disposition toward bringing daily fantasy sports into a more normalized existence through regulation.

Every time I sat down to write this piece through late December and early January, it seemed something then happened in government that required me to stop before producing a column that was instantly antiquated. The NY attorney-general revised his complaint against FanDuel & DraftKings, seeking to claw back every nickel they ever made in his state, while updating his legal attack to focus on alleged consumer deception in their deposit bonus programs; an appellate court in NY issued a permanent stay permitting the Big Two to keep operating in the state; the IL attorney-general issued an opinion that the Big

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Two were violating state law, and ordered them to withdraw from the state; a number of states - Indiana, Vermont, Missouri - introduced bills to join a number of other states (including NY and IL) to legalize DFS, on the heels of the CA Assembly's gaming committee approving a bill to legalize the activity; MA promulgated draft regulations for public commentary, and their state lottery issued a request for information on fantasy sports games.

I have to laugh whenever people suggest this is a negative sign for the long-term prospects of daily fantasy sports. Sure, the triggering events were not great for the industry - alleged insider trading, accusations of false & deceptive advertising, and a rehash of the “skill versus chance” arguments - but, frankly, if only one or two of those same states were making the similar efforts on the behalf of online poker or iGaming, they'd be having a Mardi Gras parade in the industry.

Certainly, there is a chance that there may be some Balkanization as states regulate. While small states may see a need to band together, larger states will surely consider systems where they keep their players' revenue in their state, as they have in online poker legislation (ex. California). This would seriously hamper the existing liquidity model for most of the existing fantasy sites.

Or, as in Massachusetts, states may seek to set themselves up as the DFS operator, giving the franchise to their lottery commission or limiting it to their existing licensed gaming operators. If existing DFS operators are required to partner with licensees, their already profit-challenged

model will become even more so, as they enter into revenue share agreements - or possibly even simple software supplier agreements.

From a product perspective, how will DFS operators survive and thrive in a marketplace that limits their ability to promote huge tournaments with eye-popping prize pools to draw in players? Some of the early legislative measures are exploring limits on entries and fees that could be disruptive to the status quo. And operators will have to ask themselves: how does my product translate to a retail space, as existing licensees will certainly make the case to their lawmakers that it is they who should be offering these real-money games to state residents.

Finally, consumers need a boost with the games. Clearly, lawmakers are seeking to protect consumers in virtually every new DFS bill introduced, but operators need to do more than just assure their players that the games are “on the level”. We have to make them fun. We have to make them accessible to a broader base of players though new formats and innovative products (yes, full disclosure, that is exactly what my company FastFantasy is doing). And we have to find an intuitive fit for the game into players' experience of their favourite sports. If we're creating games that take too much time or seem difficult to play, that takes away from the real experience - the sporting contests themselves. We're content to be that “second screen” experience for our players, though our goal is to be a second-screen experience that becomes an irresistible and integral part of our users' total experience.

In the end, it's easy to be bullish on the future of daily fantasy sports. The number of state legislatures moving with relative speed to introduce bills to expressly legalize DFS, even in New York and Illinois, will only increase in 2016. The leagues and broadcast networks have clearly bought into the value created for their own products by the games, though their love is hardly unconditional, as they will likely expect a resolution to the legal and regulatory difficulties facing the Big Two.

Companies that can respond to the opportunities for fantasy sports that evolve out of this forced and accelerated adolescence in the US, and that can expand into international markets in a meaningful way will be big winners, but only with a focus on product that creates a natural draw for players into the games.



Joe Brennan is Founder & CEO, FastFantasy. Since 2006, Joe has been a leader in the passage of legislation to legalize and regulate iGaming and sports gaming in the US at both the state and federal level, culminating in 2013 New Jersey iGaming law. He continues to serve as a consultant to regulators and legislators specializing in iGaming and sports gaming politics.